

FARRIS
MATHEWS
BRANAN
& HELLEN

PLC

Attorneys at Law

Suite 2400
511 Union Street
Nashville, TN 37219
Phone 615 726-1200
Fax 615 726-1776

Attorneys

William W. Farris
Harlan Mathews
Homer Boyd Branan, III
Tim Wade Hellen
Edwin Dean White, III
Charles B. Welch, Jr.
G. Ray Bratton
John Michael Farris
O. Douglas Shipman
D. Edward Harvey
Rebecca Pearson Tuttle
Eugene Stone Forrester, Jr.
Dedrick Brittenum, Jr.
Barry F. White
Robert F. Miller
Robert A. McLean
Anita I. Lotz
Gregory W. O'Neal
Steven C. Brammer
Harold W. Fonville, II
Fred D. (Tony) Thompson, Jr.
Richard D. Click
Jeffrey M. Clark

Of Counsel

Henry H. Hancock

MEMPHIS DOWNTOWN
Suite 2000
One Commerce Square
Memphis, TN 38103
Phone 901 259-7100
Fax 901 259-7150

MEMPHIS EAST
Suite 400
5384 Poplar Avenue
Memphis, TN 38119
Phone 901 763-4000
Fax 901 763-4095

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REGULATORY AUTH.

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OFFICE OF THE
CLERK AND DELIVERY

February 16, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

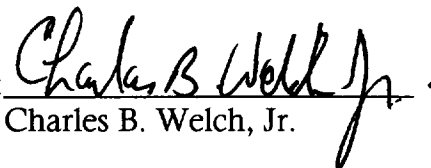
RE: *Proceeding for the Purpose of Addressing Competitive
Effects of Contract Service Arrangements filed by BellSouth
Telecommunications, Inc. in Tennessee
TRA Docket No. 98-00559*

Dear Mr. Waddell:

Enclosed for filing, please find the original plus thirteen (13) copies of the Response of Time Warner Communications of the Mid-South, L.P. and NewSouth Communications, Corp. to BellSouth Telecommunications, Inc. Motion to Compel. Copies are being served on parties of record.

If you have any questions or concerns with regard to this filing, please do not hesitate to contact me.

Very truly yours,

By: 
Charles B. Welch, Jr.

CBWjr:cg

cc: Carolyn M. Marek
Kevin Hendricks
Parties of record

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PROCEEDING FOR THE PURPOSE OF ADDRESSING
COMPETITIVE EFFECTS OF CONTRACT SERVICE
ARRANGEMENTS FILED BY BELL SOUTH
TELECOMMUNICATIONS, INC. IN TENNESSEE**

**DOCKET NO.
98-00559**

***RESPONSE TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO COMPEL DISCOVERY FROM COMPETING
INTERVENORS FILED ON BEHALF OF
NEWSOUTH COMMUNICATIONS, LLC AND
TIME WARNER COMMUNICATIONS OF THE MID-SOUTH, L.P.***

NewSouth Communications, L.L.C. ("NewSouth") and Time Warner Communications of the Mid-South, L.P. ("Time Warner") submit that the Tennessee Regulatory Authority should deny BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Compel to the extent that the motion is directed at these intervenors. Generally, BellSouth's first and second data requests, served on September 16, 1998 and October 21, 1998, respectfully, seek information and documentation irrelevant to the issues in this proceeding and, further, the requests are generally not reasonably calculated to lead to the discovery of admissible evidence. NewSouth and Time Warner objections, therefore, should be sustained. More particularly, NewSouth and Time Warner respond to the specific allegations and arguments of BellSouth as follows:

First Data Requests Nos. 4 and 5.

First Data Request No. 4. Do you contend that any BellSouth Contract Service Arrangement is discriminatory?

First Data Request No. 5. If the answer to the foregoing request is in the affirmative, for each CSA which you contend is discriminatory, please:

- (a) identify the CSA by applicable CSA, tariff, or docket number;
- (b) identify the terms, conditions, or provisions of the CSA which you contend are discriminatory, if any:
- (c) state all facts which support your contention that the CSA or any terms, conditions, or provisions contained therein are discriminatory; and
- (d) identify all documents which support your contention that the CSA or any terms, conditions or provisions contained therein are discriminatory.

Response: BellSouth complains that NewSouth and Time Warner were not responsive to the requests in that they fail to identify certain documents and state the facts in support of their contention that certain CSAs are discriminatory. Time Warner and NewSouth submit that collecting the customer information to demonstrate that similarly situated customers are offered different terms, rates, and conditions has been made impossible by the Protective Order signed by the parties and made a part of the record in this proceeding.

At page 3, paragraph 4(a), review of CSA contracts are restricted to counsel of record and outside consultants and expert witnesses. This restriction prohibits discussion with company officers and employees necessary to develop any meaningful factual scenario which would support the contention. Obviously, legal counsel and subject matter experts are not equipped with customer information in specific markets to be able to identify rates, terms and conditions offered to similarly situated customers. Further, these parties have not been provided any information relevant to the BellSouth customers for whom the CSAs were created except that information which appears on the face of the CSA. Certainly, this information is insufficient to conduct an adequate market survey to compare the availability of BellSouth's service offerings to similarly situated customers.

First Data Requests Nos. 6, 7, 8, 9, 10, 11, 12 and 13

First Data Request No. 6. Have you entered into any Special Contracts from January 1, 1994 to the present?

First Data Request No. 7. If the answer to the foregoing request is in the affirmative, please identify each such Special Contract, including:

- (a) the effective date of the Special Contract;
- (b) the term of the Special Contract;
- (c) the telecommunications services provided under the Special Contract; and
- (d) the differences in the rates, terms, and conditions for the telecommunications services provided under the Special Contract and the rates, term, and conditions for those same services as set forth in your approved tariffs in Tennessee.

First Data Request No. 8. Do any of the Special Contracts you have entered into since January 1, 1994, contain any provisions which require that the person subject to the Special Contract pay termination charges in the event the person cancels service orders prior to installation or terminates the Special Contract before the term of the agreement has expired?

First Data Request No. 9. If the answer to the foregoing request is affirmative, please:

- (a) identify each such Special Contract; and
- (b) describe any termination charges that would apply under each such Special Contract if the person subject to the Special Contract cancels a service order prior to installation or terminates the Special Contract before the term of the agreement has expired.

First Data Request No. 10. Has any person subject to a Special Contract entered into with you since January 1, 1994 been assessed or paid termination charges for canceling a service order prior to installation or terminating the Special Contract before the term of the agreement has expired?

First Data Request No. 11. If the answer to the foregoing request is in affirmative, please:

- (a) identify the person involved and the Special Contract under which the termination charges were assessed or paid;
- (b) state the amount of termination charges that were assessed or paid; and
- (c) describe with specificity the method by which the termination charges were calculated.

First Data Request No. 12. Are the services that you provide under each Special Contract available at the same rate to any person who meets the terms and conditions of the Special Contract?

First Data Request No. 13. If the answer to the foregoing request is in the affirmative, please:

- (a) describe the criteria you consider, if any, in determining whether a person meets the terms and conditions of the Special Contract;
- (b) identify all documents the refer to or relate to the criteria you consider, if any, in determining whether a person meets the terms and conditions of the Special Contract;
- (c) describe the procedures you utilize, if any, in determining whether a person meets the terms and conditions of the Special Contract; and
- (d) identify all documents that refer or relate to the procedures you utilize, if any, in determining whether a person meets the terms and conditions of the Special Contract.

Response: BellSouth contends that information concerning special contracts offered by competing local exchange carriers is relevant to this proceeding “because such information tends to prove material issues concerning the competitiveness of BellSouth’s CSAs.” As the style of this docket suggests, this proceeding is for the purpose of addressing competitive effects of contract service arrangements filed by BellSouth Telecommunications, Inc. in Tennessee. The scope of this docket does not include the competitive effects of contracts of competing companies. The reason for the limitation for the scope of this proceeding is obvious. BellSouth has been and continues to

be the sole provider of local exchange telephone services to a vast majority of the Tennessee market. Since the enactment of the Tennessee Telecommunications Act of 1995 and the Federal Telecommunications Act of 1996, competing providers have only managed to capture an infinitesimal market share. For all practical purpose, BellSouth is still a monopoly provider.

According to BellSouth's own admission, its revenues from CSAs has increased by more than one thousand percent (1000%) in the past three (3) years. This is an obvious attempt by BellSouth to obligate its best customers to long term service contracts which make it difficult, if not impossible, for competing providers to attract market share. Arguably, every CSA, in every instance, is, therefore, anti-competitive. The only issues germane to this proceeding involve circumstances under which BellSouth's CSAs should be permitted. Contracts of competing companies with no market power are irrelevant and should not be subject to disclosure in this proceeding. Such disclosure could further disadvantage competitors in their efforts to gain market share. At least at this point, contracts with competitors have no competitive effect in Tennessee. Accordingly, the authority should deny BellSouth's motion to compel and sustain the intervenors' objections to these data requests.

Second Data Requests Nos. 2, 3, 4, and 5

Second Data Request No. 2. Have you ever decided not to offer to provide telecommunications service to a person in Tennessee because the person was subject to a CSA with BellSouth?

Second Data Request No. 3. If the answer to the foregoing request is in the affirmative, for each such person, please:

- (a) identify the person involved;
- (b) identify the telecommunications services you would have offered to provide the person had the person not been subject to a CSA with BellSouth; and
- (c) identify all documents that refer or relate to your decision not to offer to provide

telecommunications service to a person in Tennessee because the person was subject to a CSA with BellSouth.

Second Data Request No. 4. Have you ever offered to provide telecommunications service to a person in Tennessee who declined your offer, in whole or in part, because the person had previously entered into a CSA with BellSouth?

Second Data Request No. 5. If the answer to the foregoing request is in the affirmative, for each such person, please:

- (a) identify the person involved;
- (b) identify the telecommunications services you offered to provide; and
- (c) identify all documents that refer or relate to your offer to provide telecommunications service to a person in Tennessee which was declined, in whole or in part, because the person had previously entered into a CSA with BellSouth.

Response: Time Warner responded to these data requests by informing BellSouth that the information "is not available at this time." Time Warner is using its best efforts to collect and document this information as expeditiously as possible. In the event the information becomes available, Time Warner will promptly supplement its response to these data requests.

Second Data Requests Nos. 6 and 7

Second Data Request No. 6. Do you contend that BellSouth's CSAs are not available for resale in Tennessee?

Second Data Request No. 7. If the answer to the foregoing request is in the affirmative, please:

- (a) state all facts which support your contention that BellSouth's CSAs are not available for resale in Tennessee, including describing with particularity any efforts you have made to resell a

BellSouth CSA in this State; and

(b) identify all documents which support your contention that BellSouth's CSAs are not available for resale in Tennessee, including any documents that refer or relate to your efforts to resell a BellSouth CSA in this State.

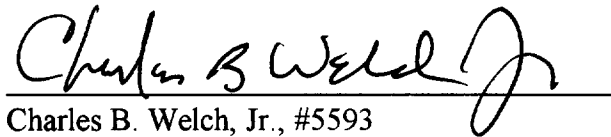
Response: NewSouth and Time Warner submit that the information sought by these data requests is only available to BellSouth. Within the confines of the Protective Order entered in this cause, it is impossible for NewSouth or Time Warner to respond to these data requests.

For the foregoing reasons, the Authority should deny BellSouth's Motion to Compel Discovery from NewSouth and Time Warner and should sustain their objections.

Respectfully submitted,

FARRIS, MATHEWS,
BRANAN & HELLEN, P.L.C.

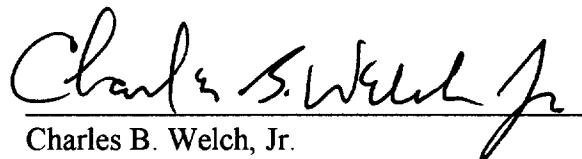
BY:



Charles B. Welch, Jr., #5593
Attorney for Time Warner Communications
of the Mid-South, L.P. and
NewSouth Communications Corp.
511 Union Street, Suite 2400
Nashville, Tennessee 37219
(615) 726-1200

CERTIFICATE OF SERVICE

I, Charles B. Welch, Jr., hereby certify that I have served a copy of the foregoing document on the parties of record, by depositing a copy of same in the U.S. Mail, postage prepaid this the 16th day of February, 1998.


Charles B. Welch, Jr.

SERVICE LIST - DOCKET NO. 98-00559

Richard Collier (Hearing Officer)
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500

Guy Hicks
Patrick W. Turner
BellSouth Telecommunications, Inc.
Legal Department
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

William J. Ellenberg
Bennett L. Ross
675 W. Peachtree Street, Suite 4300
Atlanta, GA 30375

Carolyn Tatum-Roddy
Sprint
3100 Cumberland Circle
Atlanta, GA 30339

Jim Lamoureux
AT&T
Room 8100
1200 Peachtree St., N.E.
Atlanta, GA 30309

Henry Walker
(SECCA, e.spire Communications &
NEXTLINK)
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
P. O. Box 198062
Nashville, TN 37219

Vance L. Broemel
Assistant Attorney General
Consumer Advocate Division
Cordell Hull Building, 2nd Floor
425 Fifth Avenue North
Nashville, TN 37243-0500

Jon E. Hastings (MCIMetro Access
Transmission Services, Inc.)
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
P. O. Box 198062
Nashville, TN 37219